

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BEATRICE HUDSON,)	
)	
Plaintiff,)	8:05cv84
)	
vs.)	MEMORANDUM AND ORDER
)	
CITY OF OMAHA,)	
)	
Defendant.)	

This matter is before the court for initial review of filing no. 8, the Amended Complaint filed by the plaintiff, Beatrice Hudson. In filing no. 5, a Memorandum and Order of February 25, 2005, the court conducted initial review of the plaintiff's original complaint against the City of Omaha, Nebraska. I find that the plaintiff has made a sincere effort to clarify her claims as required by previous orders in this case. The Amended Complaint has been reduced to 28 pages from the 68-page original complaint. The plaintiff has used paragraph numbers and has provided dates of specific occurrences. Therefore, filing no. 8 is accepted instanter as the operative complaint in this case.

However, on initial review, I find that the plaintiff asserts only one claim which adequately states a cause of action on which relief may be granted. The plaintiff alleges that on specified dates, Omaha police officers detained her or issued tickets not because of anything the plaintiff did but because of her race. All other claims asserted in filing no. 8 are hereby dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), which states:

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

....

(B) the action or appeal—

(ii) fails to state a claim on which relief may be granted

As initial review of the complaint is now concluded, it is time for the plaintiff to obtain service of process on the defendant, as set forth below. Because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendant, after the plaintiff completes the appropriate forms.

IT IS THEREFORE ORDERED:

1. This action will proceed on the plaintiff's claim that on the dates specified in the Amended Complaint, Omaha police officers detained the plaintiff or issued tickets not because of anything the plaintiff did, but because of her race; all other claims in the Amended Complaint are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

2. To obtain service of process on the defendant, the plaintiff must complete and return forms which the Clerk of Court will provide. The Clerk of Court shall provide the plaintiff with ONE summons and ONE Form 285 and a copy of this order.

3. In completing the forms, the plaintiff shall comply with Neb. Rev. Stat. § 25-510.02(2), which explains where a City may be served with process: "Any county, city, or village of this state may be served by personal, residence, or certified mail service upon the chief executive officer, or clerk." Therefore, the City may be served at the address of the City Clerk or the Mayor, which the plaintiff may obtain from a telephone directory.

4. Upon receipt of the completed forms, the Clerk of Court will sign the summons, to be forwarded, together with a copy of the Amended Complaint, to the U.S. Marshal for service of process. The U.S. Marshal shall serve the summons and Amended Complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal.

5. Fed. R. Civ. P. 4 requires service of the summons and complaint on a defendant within 120 days of filing the complaint. However, the plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this order to complete service of process. Failure to obtain service of process on the defendant within 120 days of the date of this order may result in dismissal of this case without further notice.

6. After an appearance has been filed by the defendant, the plaintiff must serve on the defendant's counsel a copy of every letter, pleading, motion or other document submitted to the court. Parties usually serve copies on other parties by first class mail.

7. The plaintiff shall include with each document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to the attorney for the defendant. To send communications to the court without serving a copy on all other parties to a case violates the rules of court.

8. A defendant has twenty (20) days after receipt of the summons to answer or otherwise respond to the complaint.

9. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court.

10. The plaintiff shall keep the court informed of her current address at all times while this case is pending. Failure to do so may result in dismissal.

DATED this 25th day of May, 2005.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge

INSTRUCTIONS: SUMMONS FORMS AND FORMS 285
for plaintiffs proceeding pro se and in forma pauperis

1. A summons form provides notice to a defendant that the defendant has been sued and must answer or otherwise respond to the complaint.
2. A form USM-285 ("form 285") provides directions to the U.S. Marshal as to whom to serve with process and where to serve the defendant(s). The U.S. Marshal serves the defendant(s) without cost to you because you are proceeding in forma pauperis ("IFP").
3. Only one defendant may be named on each summons and each form 285.
4. You may serve only defendant(s) named in the case caption of the complaint. If a person is not named in the case caption of the operative complaint (generally the most recent complaint), that person will not be served with process.
5. Do not copy your complaint to attach to the summons; the court will do that for you.
6. Be sure to print your case number on all forms.
7. You must give an address for each party to be served. The U.S. Marshal will not know a defendant's address.
8. Where a summons form states: "You are hereby summoned and required to serve on plaintiff's attorney" print your name and address.
9. Where a form 285 states: "send notice of service copy to requestor at name and address" print your name and address.
10. Where a form 285 calls for "signature of attorney or other originator" provide your signature and date the form.
11. Leave the last part of the summons form blank. The court will fill in the number of days in which the defendant must answer, and the court will sign and date the form.